

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Shiner, Texas)

MM Docket No. 01-105  
RM-10104

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: March 10, 2004**

**Released: March 12, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making*<sup>1</sup> filed by Stargazer Broadcasting, Inc. ("Stargazer Broadcasting") proposing to allot Channel 232A at Shiner, Texas. Stargazer Broadcasting filed comments in support of the proposal reiterating its intention to apply for the channel, if allotted. First Broadcasting Company, L.P., Next Media Licensing, Inc., Rawhide Radio, L.L.C., Capstar TX Limited Partnership, and Clear Channel Broadcasting Licenses, Inc. ("Joint Parties") filed comments. Elgin FM Limited Partnership ("Elgin FM") and BK Radio filed comments in support stating their interest in applying for the channel. Stargazer Broadcasting, Maurice Salsa, Elgin FM and Charles Crawford filed reply comments. Joint Parties filed a Motion to Strike and Stargazer Broadcasting and Elgin FM filed Oppositions to the Motion. For the reasons discussed below, we are dismissing the underlying proposal to allot Channel 232A at Shiner, Texas, and terminating this proceeding.

2. In a separate proceeding in MM Docket No. 00-148, we issued a *Notice of Proposed Rule Making* proposing the allotment of Channel 233C3 to Quanah, Texas.<sup>2</sup> The comment date in that proceeding was October 10, 2000. The Joint Parties filed a timely counterproposal in that proceeding. Included in that counterproposal was a proposal to allot Channel 232A at Flatonia, Texas. The instant petition for rule making was filed on April 6, 2001. As stated by the Joint Parties, that proposal is mutually exclusive with the pending Channel 232A proposal at Flatonia, Texas, in MM Docket No. 00-148. Under the circumstances, the Shiner proposal would had to be filed by the October 10, 2000, comment date in MM Docket No. 00-148, in order to receive consideration. Stargazer Broadcasting did not do so. Accordingly, we are dismissing the Shiner proposal underlying this proceeding as untimely.<sup>3</sup> In the event the Joint Parties' counterproposal is ultimately dismissed or Channel 232A at Flatonia, Texas, is not allotted in that proceeding, Stargazer Broadcasting may then file its proposal for Channel

<sup>1</sup> *Shiner, Texas*, 16 FCC Rcd 8937 (2001).

<sup>2</sup> *Quanah, Texas*, 15 FCC Rcd 15809 (MMB 2000).

<sup>3</sup> See *Benjamin and Mason, Texas*, FCC 03-327 (January 8, 2004); see also *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990). When the *Notice of Proposed Rule Making* in this proceeding was issued, the staff was unaware of the mutual exclusivity between the Stargazer Broadcasting Shiner, Texas proposal and the Joint Parties' counterproposal for Channel 232A at Flatonia because the Flatonia proposal had not yet been entered into our data base. If the Shiner proposal had been included in the data base at that time, Stargazer Broadcasting's Petition for Rule Making at Shiner would have been returned as unacceptable for filing.

232A at Shiner, Texas. At this point in time, we do not see any public interest benefit in continuing to consider a Channel 232A allotment at Shiner contingent upon an action in a separate proceeding.

3 In their reply comments, Stargazer Broadcasting, Maurice Salsa, Elgin FM and Charles Crawford argue that the Joint Parties' counterproposal in MM Docket No. 00-148 was defective due to a conflict with a pending application at Krum, Texas, and therefore, that the counterproposal should be dismissed. As such, they further argue that there is no basis to preclude any proposal in conflict with the "technically defective" counterproposal. We disagree. Rulemaking proposals at the time of filing must fully protect all rulemaking proposals for which the comment deadline has passed.<sup>4</sup> The subsequent determination that a conflicting submitted rulemaking proposal is defective cannot cure the defect in Stargazer's Channel 232A proposal at Shiner, Texas. Any purported deficiency in the Joint Parties' counterproposal will be resolved in the context of MM Docket No. 00-148.

4. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed on April 6, 2001 by Stargazer Broadcasting, Inc., proposing to allot Channel 262A at Shiner, Texas, IS DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED

6. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

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<sup>4</sup> See 47 C.F.R. §73.207(a) (Commission will not accept rulemaking petitions unless they satisfy all distance separation requirements).